IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY THIRD DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 15296 of 2002

Between:

K.Radhabai wife of Sivaramaiah, aged about

46 yrs,house hold, resident of 16-1-24/1m,Sri Sailaja castle,

Flat No.401, Saidabad colony, Hyderabad.

..... PETITIONER

AND

1.The Deputy Registrar of co-operative Societies, Z.P.

compound, Chilakalapudi, Machilipatnam, Krishna dt.

2.The Koduru Co operative Rural Housing Society Limited

Koduru, mandal,Krishna district. Rep. by its President.

3.Sale Officer/Office of Deputy Registrar of Co operative

Socities,Z.P.compound, Chilakalapudi,Machilipatnam,Krishna dt.

4.The A.P. Co operative Tribunal at Vijayawada, rep. by its

Secretary,Vijayawada, Krishna dt.

5.Special Cadre Dy.Registrar/Regional Manager, A.P.

Co operative Housing Federation,Labbipeta, Bandar road,

Vijayawada, Krishna dt.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to stay all further proceedings in E.P.No.539/2000/2001/RM-VJA dated 24-1-2004 on the file of the 5th respondent pending disposal of main Writ Petition.

Counsel for the Petitioner: MR.P.M.GOPAL RAO

Counsel for the Respondents: GP FOR COOPERATION

The Court made the following :

ORDER

In this Writ Petition, the petitioner seeks a writ of mandamus challenging the orders in O.A.No.113 of 1999 dated 29-4-2002 on the file of the 4th respondent herein dismissing the appeal as against the orders of surcharge issued against her on 15-3-1999 by the 1st respondent herein under Section 60 of the A.P. Co-operative Societies Act, 1964 (for short 'the Act').

The facts relevant for disposal of this writ petition are that the petitioner is the wife of K.Siva Ramaiah who was the President of the Society i.e., the 2nd respondent herein and she had obtained a loan of Rs.60,000/- on 5-5-1993 repayable in instalments with interest at 13.7% per annum, in addition to penal interest on the overdue instalment amounts. The case of the petitioner is that though she has paid regularly the interest and instalment amounts, but, however, at a later stage, she could not pay some instalments. Therefore, an enquiry was conducted under Section 51 of the Act. The report reveals that the

petitioner had misutilised the funds in collusion with her husband who was the President. Thereupon a notice was issued to her and also to her husband on 22-8-1988 seeking payment of a sum of Rs.15,232/-. According to the petitioner such procedure is totally erroneous. Since no proper proceedings have been initiated under Section 61 or 71 of the Act, the petitioner had filed a reply on 30-10-1998 and paid certain amounts and raised several objections as to the maintainability of the proceedings. However, without considering all these aspects, the 1st respondent issued surcharge order dated 15-3-1999. The said proceedings are totally illegal. The petitioner had challenged the said proceedings in a revision under Article 227 of the Constitution of India in C.R.P.No.1863 of 1999 and the same was dismissed on 30-4-1999. The petitioner had then filed a regular appeal in O.A.No.113 of 1999 before the 4th respondent herein wherein initially a stay was granted subject to certain conditions that are complied by the petitioner by paying challan dated 19-4-2000. Ultimately, the said appeal was dismissed on 29-4-2002 on erroneous grounds. Hence the Writ Petition.

In the Counter affidavit filed by the 2nd respondent, it is stated that the petitioner has not come out with all true facts. According to the 2nd respondent, the petitioner had obtained a loan from the said society on the basis of a forged patta and by taking advantage of the fact that her husband was a President of the society. Further the said loan was obtained for constructing the house. A letter dated 23-12-1997 issued by the Mandal Revenue Officer, Kodur, specifically avers that no house patta was issued in favour of the petitioner and therefore, the entire transaction is totally unsustainable. After detection of the said misutilisation of funds by the petitioner in collusion with her husband, proper proceedings have been initiated under Section 60 (1) of the Act by issuing notices to both of them making liable jointly for the amount demanded i.e., Rs.15,232/-.

It was further stated specifically that on 17-11-1997 the petitioner gave a statement before the Enquiry Officer to the effect that she paid loan of Rs.60,000/- in two instalments, that she failed to construct the house. She had

repaid a sum of Rs.6,768/- and agreed to pay the balance amount in instalments within a period of six months. This was also reiterated in the reply given by the petitioner on 30-10-1998. In spite of the same, the petitioner did not make any payments and therefore, they sought to proceed against her property. Thus, the proceedings as initiated are perfectly valid and the petitioner has unsuccessful to challenge the same in a revision under Section 227 of the Constitution of India. Further, even in this Writ Petition, the conditional interim order dated
19-8-2002 in W.P.M.P.No.19153 of 2002 has not been complied with and therefore, the proposed action is sought to be conducted for realization of the amounts. Thus, it is the case of the 2nd respondent that the petitioner has not come out with all the true facts and trying to evade the liability. Hence there are no merits in the case of the petitioner. It was further stated that the allegation made by the petitioner that she has paid a sum of Rs.25,000/- on 4-2-2003, Rs.63,340/- on 18-2-2003 are not correct. Further the pleas raised were already rejected by the orders dated 24-1-2004 by the competent authority and therefore, the Writ Petition is liable to be dismissed.

The learned counsel for the petitioner strenuously contended that no liability as such can be fastened on the petitioner as totally erroneous proceedings have initiated and it was also further contended that having regard to the action which is sought to be conducted on 19-3-2004, the petitioner has filed an application in W.P.M.P.No.14205/2004 staying further proceedings wherein it was stated that various amounts have already been paid to the 5th respondent and who had issued a no due certificate to the petitioner. Therefore, the entire loan amount having been paid within a period of ten years in place of 20 years as contemplated. The very execution as sought to be laid by the 2nd respondent in E.P.No.539 of 2000 is wholly unsustainable.

Mr.V.S.R.Anjineyulu, learned counsel appearing on behalf of the 2nd respondent denied that any amount has been paid to the 2nd respondent who held to be entitled to the amount and the liability of the petitioner was also fastened against her and in favour of the 2nd respondent and not that of the 5th respondent. Therefore, the petitioner cannot claim any discharge on the basis

of any payment made to the 5th respondent.

Having regard to the submissions made and also on perusal of material, the question that falls for consideration is:

> *"Whether the proceedings as initiated against the petitioner for recovery of the amount is sustainable and whether the payments made to the 5th respondent would constitute a valid discharge for the liability as fixed against the 2nd respondent?"*

There is no dispute to the fact that the petitioner's husband was the President of the Society at the relevant point of time and she had obtained the said loan for the purpose of construction of house. It is only after the 2nd respondent came to know about the non-existence of the house and also the site, proceedings have been initiated under Section 51 and followed by Section 60 of the Act against the petitioner and her husband jointly. There is also no serious dispute with regard to the fact that the petitioner gave a statement on 17-11-1997 before the Enquiry Officer. According to the 2nd respondent, she paid the amount of Rs.60,000/- in two instalments as she failed make any construction of the house. However, she stated that she paid a sum of Rs.6,768/- and further agreed to pay the balance of the loan amount within a period of six months. The contention of the petitioner is that the statement is being misread and payments made by the petitioner is only with regard to the substantial amounts due, but not the outstanding amount and no liability can be fastened on her. Though there is no serious dispute with regard to the payment of amount of Rs.6,768/-, but the petitioner states that she has paid substantial amounts to the 5th respondent i.e., Rs.25,000/- on 4-2-2003 and Rs.63,340/- on 18-2-2003. The said payments are being made to the 5th respondent which is a Co-operative Federation.

Learned counsel appearing for the petitioner submits that any payment made to the 5th respondent can as well be equal to the payment to the 2nd respondent and therefore, there is a valid discharge. In support of it, the petitioner sought to place reliance on certain conditions which show that the amounts can as well be paid to the 5th respondent. Therefore, he contended that all such payments made to the 5th respondent can be treated as the payments to the 2nd respondent.

There is no dispute on the part of the petitioner that the liability ultimately has fixed and imposed in proceedings under Section 60 of the Act is only in favour of the 2nd respondent, the primary society and not as against the 5th respondent. The 5th respondent nowhere figures in the proceedings nor it is an authority before any such proceedings. Surcharge proceedings by the primary authority and as confirmed in the appeal by the appellate authority reiterates the liability of the petitioner only to the 2nd respondent. Except placing reliance on the note of the annexure to the agreement, no other valid reasons are forthcoming on behalf of the petitioner. When liability is fixed as against the 2nd respondent, there is no reason coming forth on behalf of the petitioner that as to why the said payment was made to the 5th respondent at any point of time. There is no such direction at any level by the authorities concerned or even by the appellate authority much less this Court to make any such payments in favour of the 5th respondent. Any internal arrangements between the 2nd respondent and the 5th respondent on administrative side would not in any way entitle the petitioner to claim any such payment as valid one or entitles her to make such direct payments to the 5th respondent avoiding the 2nd respondent. It is also curious to note that there is no reason forthcoming on behalf of the petitioner as to why no such payments were made to the 2nd respondent. It is the case of the petitioner that when such offer was made, the same is being refused or declined in any manner by the 2nd respondent and therefore, the petitioner having no other alternative had to deposit with the 5th respondent. In the absence of any of these reasons, there is absolutely no justification for the petitioner to claim payments to the 5th respondent and plead a discharge. The

obligation arisen there under in pursuance of the loan transaction as entered into between the petitioner and the society is a valid one and therefore, the petitioner is fully bound by the obligation as that arise in pursuance of the terms and conditions there under. In the circumstances, it cannot be said that there is any valid payment made by the petitioner in favour of the 2nd respondent nor there is any such valid discharge.

Except trying to wriggle out her maintainability, no other valid point has been made on behalf of the petitioner to get over the surcharge proceedings as confirmed in appeal. Having regard to the fact that the petitioner is a loanee directly from the 2nd respondent, who had obtained the loan cannot wriggle out of her obligation to discharge the said liability. In the circumstances, I find that there are no merits in the Writ Petition and accordingly, it is dismissed. No costs.

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23 -11-2004.

Hsd

Asst.Registrar

To

1.The Deputy Registrar of co-operative Societies, Z.P.

compound, Chilakalapudi, Machilipatnam, Krishna dt.

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Vijayawada, Krishna dt.

6. 2 C.Cs toG.P. for co-operation, High Court ofA.P. High Court Buildings, Hyderabad (OUT)

7. 2 C.D. copies.